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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT GARY RAMIREZ,

Defendant and Appellant.

F044605

(Super. Ct. No. CRF03-118204)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Ronn M. Couillard, Judge.

William Davies, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Stephen G. Herndon and James Ching, Deputy Attorneys General, for Plaintiff and Respondent.

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On November 12, 2003, appellant, Robert Gary Ramirez, pled no contest to one felony count of possession for sale of 14.24 grams of heroin (Health & Saf. Code,

*Before Harris, Acting P.J., Levy, J., and Gomes, J.

§ 11351, count one) and to a misdemeanor count of possession of narcotics paraphernalia (Health & Saf. Code, § 11364, count three). Ramirez admitted a prior serious felony conviction within the meaning of the three strikes law and a prior prison term enhancement pursuant to Penal Code section 667.5, subdivision (b). Ramirez also admitted an on-bail enhancement for absconding while on bail (Pen. Code, § 12022.1) in Tulare County case No. LF005749A. Pursuant to the plea agreement, Ramirez could receive a prison term as high as eight years, but he was permitted to argue for a lower term at sentencing.

At the sentencing hearing, the trial court imposed the three-year midterm on count one which it doubled to six years pursuant to the three strikes law. The court imposed the two-year on-bail enhancement for a total prison term of eight years.¹

DISCUSSION

On appeal, Ramirez contends the trial court erred in failing to stay the on-bail enhancement because case No. LF005749A is still pending.² Respondent concedes the error.

Ramirez has filed a certified copy of the court docket entries from case No. LF005749A indicating this action was still pending as of March 25, 2004. Ramirez has requested that we take judicial notice of the certified docket sheets pursuant to Evidence Code section 452, subdivision (d). Respondent has filed no opposition to the request. We note that the probation report in the instant action stated that case No. LF005749A was pending. We grant appellant's request for judicial notice.

¹ The court initially stayed the prior prison term enhancement. Ramirez's appellate counsel successfully motioned the trial court to strike the prior prison term enhancement. The trial court filed an order reflecting the change, but did not prepare an amended abstract of judgment.

² Because the sole issue on appeal concerns the on-bail enhancement, we do not recount the facts of Ramirez's offense.

Subdivision (d) of Penal Code section 12022.1 provides that: “Whenever there is a conviction for the secondary offense and the enhancement is proved, and the person is sentenced on the secondary offense prior to the conviction of the primary offense, the imposition of the enhancement shall be stayed pending imposition of the sentence for the primary offense. The stay shall be lifted by the court hearing the primary offense at the time of sentencing for that offense and shall be recorded in the abstract of judgment. If the person is acquitted of the primary offense the stay shall be permanent.” Case No. LF005749A is the primary action and the instant action is the secondary action. Therefore, the trial court erred in failing to stay the on-bail enhancement.

Because of the possibility that there has been a resolution of case No. LF005749A, we will remand for the trial court to determine whether there has been a final disposition of the earlier action.

DISPOSITION

The case is remanded to the trial court to determine whether there has been a resolution of case No. LF005749A in accordance with the procedures set forth in Penal Code section 12022.1, subdivision (d). If the primary case is still pending, the trial court shall prepare an amended abstract of judgment indicating that the on-bail enhancement is stayed. The court shall amend the abstract of judgment to reflect that the prior prison term enhancement was stayed and forward it to the Department of Corrections. The judgment is otherwise affirmed.